

AMENDED IN SENATE AUGUST 6, 2012

AMENDED IN SENATE JUNE 13, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2408

Introduced by Assembly Member Skinner
(Coauthor: Senator DeSaulnier)

February 24, 2012

An act to amend Sections 17276.20, 17276.21, 17276.22, 24416.20, 24416.21, and 24416.22 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2408, as amended, Skinner. Taxation: deductions: net operating loss carrybacks.

The Personal Income Tax Law and the Corporation Tax Law allow individual and corporate taxpayers to utilize net operating losses and carryovers and carrybacks of those losses for purposes of offsetting their individual and corporate tax liabilities. Existing law allows net operating losses attributable to taxable years beginning on or after January 1, 2013, to be carrybacks to each of the preceding 2 taxable years, as provided.

This bill would disallow the use of net operating loss carrybacks by individual and corporate taxpayers.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17276.20 of the Revenue and Taxation
2 Code is amended to read:
3 17276.20. Except as provided in Sections 17276.1, 17276.2,
4 17276.4, 17276.5, 17276.6, and 17276.7, the deduction provided
5 by Section 172 of the Internal Revenue Code, relating to net
6 operating loss deduction, shall be modified as follows:
7 (a) (1) Net operating losses attributable to taxable years
8 beginning before January 1, 1987, shall not be allowed.
9 (2) A net operating loss shall not be carried forward to any
10 taxable year beginning before January 1, 1987.
11 (b) (1) Except as provided in paragraphs (2) and (3), the
12 provisions of Section 172(b)(2) of the Internal Revenue Code,
13 relating to amount of carrybacks and carryovers, shall be modified
14 so that the applicable percentage of the entire amount of the net
15 operating loss for any taxable year shall be eligible for carryover
16 to any subsequent taxable year. For purposes of this subdivision,
17 the applicable percentage shall be:
18 (A) Fifty percent for any taxable year beginning before January
19 1, 2000.
20 (B) Fifty-five percent for any taxable year beginning on or after
21 January 1, 2000, and before January 1, 2002.
22 (C) Sixty percent for any taxable year beginning on or after
23 January 1, 2002, and before January 1, 2004.
24 (D) One hundred percent for any taxable year beginning on or
25 after January 1, 2004.
26 (2) In the case of a taxpayer who has a net operating loss in any
27 taxable year beginning on or after January 1, 1994, and who
28 operates a new business during that taxable year, each of the
29 following shall apply to each loss incurred during the first three
30 taxable years of operating the new business:
31 (A) If the net operating loss is equal to or less than the net loss
32 from the new business, 100 percent of the net operating loss shall
33 be carried forward as provided in subdivision (d).

1 (B) If the net operating loss is greater than the net loss from the
2 new business, the net operating loss shall be carried over as
3 follows:

4 (i) With respect to an amount equal to the net loss from the new
5 business, 100 percent of that amount shall be carried forward as
6 provided in subdivision (d).

7 (ii) With respect to the portion of the net operating loss that
8 exceeds the net loss from the new business, the applicable
9 percentage of that amount shall be carried forward as provided in
10 subdivision (d).

11 (C) For purposes of Section 172(b)(2) of the Internal Revenue
12 Code, the amount described in clause (ii) of subparagraph (B) shall
13 be absorbed before the amount described in clause (i) of
14 subparagraph (B).

15 (3) In the case of a taxpayer who has a net operating loss in any
16 taxable year beginning on or after January 1, 1994, and who
17 operates an eligible small business during that taxable year, each
18 of the following shall apply:

19 (A) If the net operating loss is equal to or less than the net loss
20 from the eligible small business, 100 percent of the net operating
21 loss shall be carried forward to the taxable years specified in
22 subdivision (d).

23 (B) If the net operating loss is greater than the net loss from the
24 eligible small business, the net operating loss shall be carried over
25 as follows:

26 (i) With respect to an amount equal to the net loss from the
27 eligible small business, 100 percent of that amount shall be carried
28 forward as provided in subdivision (d).

29 (ii) With respect to that portion of the net operating loss that
30 exceeds the net loss from the eligible small business, the applicable
31 percentage of that amount shall be carried forward as provided in
32 subdivision (d).

33 (C) For purposes of Section 172(b)(2) of the Internal Revenue
34 Code, the amount described in clause (ii) of subparagraph (B) shall
35 be absorbed before the amount described in clause (i) of
36 subparagraph (B).

37 (4) In the case of a taxpayer who has a net operating loss in a
38 taxable year beginning on or after January 1, 1994, and who
39 operates a business that qualifies as both a new business and an
40 eligible small business under this section, that business shall be

1 treated as a new business for the first three taxable years of the
2 new business.

3 (5) In the case of a taxpayer who has a net operating loss in a
4 taxable year beginning on or after January 1, 1994, and who
5 operates more than one business, and more than one of those
6 businesses qualifies as either a new business or an eligible small
7 business under this section, paragraph (2) shall be applied first,
8 except that if there is any remaining portion of the net operating
9 loss after application of clause (i) of subparagraph (B) of that
10 paragraph, paragraph (3) shall be applied to the remaining portion
11 of the net operating loss as though that remaining portion of the
12 net operating loss constituted the entire net operating loss.

13 (6) For purposes of this section, the term “net loss” means the
14 amount of net loss after application of Sections 465 and 469 of the
15 Internal Revenue Code.

16 (c) Net operating loss carrybacks shall not be allowed.

17 (d) (1) (A) For a net operating loss for any taxable year
18 beginning on or after January 1, 1987, and before January 1, 2000,
19 Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified
20 to substitute “five taxable years” in lieu of “20 taxable years”
21 except as otherwise provided in paragraphs (2) and (3).

22 (B) For a net operating loss for any taxable year beginning on
23 or after January 1, 2000, and before January 1, 2008, Section
24 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to
25 substitute “10 taxable years” in lieu of “20 taxable years.”

26 (2) For any taxable year beginning before January 1, 2000, in
27 the case of a “new business,” the “five taxable years” in paragraph
28 (1) shall be modified to read as follows:

29 (A) “Eight taxable years” for a net operating loss attributable
30 to the first taxable year of that new business.

31 (B) “Seven taxable years” for a net operating loss attributable
32 to the second taxable year of that new business.

33 (C) “Six taxable years” for a net operating loss attributable to
34 the third taxable year of that new business.

35 (3) For any carryover of a net operating loss for which a
36 deduction is denied by Section 17276.3, the carryover period
37 specified in this subdivision shall be extended as follows:

38 (A) By one year for a net operating loss attributable to taxable
39 years beginning in 1991.

1 (B) By two years for a net operating loss attributable to taxable
2 years beginning prior to January 1, 1991.

3 (4) The net operating loss attributable to taxable years beginning
4 on or after January 1, 1987, and before January 1, 1994, shall be
5 a net operating loss carryover to each of the 10 taxable years
6 following the year of the loss if it is incurred by a taxpayer that is
7 under the jurisdiction of the court in a Title 11 or similar case at
8 any time during the income year. The loss carryover provided in
9 the preceding sentence shall not apply to any loss incurred after
10 the date the taxpayer is no longer under the jurisdiction of the court
11 in a Title 11 or similar case.

12 (e) For purposes of this section:

13 (1) "Eligible small business" means any trade or business that
14 has gross receipts, less returns and allowances, of less than one
15 million dollars (\$1,000,000) during the taxable year.

16 (2) Except as provided in subdivision (f), "new business" means
17 any trade or business activity that is first commenced in this state
18 on or after January 1, 1994.

19 (3) "Title 11 or similar case" shall have the same meaning as
20 in Section 368(a)(3) of the Internal Revenue Code.

21 (4) In the case of any trade or business activity conducted by a
22 partnership or "S" corporation paragraphs (1) and (2) shall be
23 applied to the partnership or "S" corporation.

24 (f) For purposes of this section, in determining whether a trade
25 or business activity qualifies as a new business under paragraph
26 (2) of subdivision (e), the following rules shall apply:

27 (1) In any case where a taxpayer purchases or otherwise acquires
28 all or any portion of the assets of an existing trade or business
29 (irrespective of the form of entity) that is doing business in this
30 state (within the meaning of Section 23101), the trade or business
31 thereafter conducted by the taxpayer (or any related person) shall
32 not be treated as a new business if the aggregate fair market value
33 of the acquired assets (including real, personal, tangible, and
34 intangible property) used by the taxpayer (or any related person)
35 in the conduct of its trade or business exceeds 20 percent of the
36 aggregate fair market value of the total assets of the trade or
37 business being conducted by the taxpayer (or any related person).
38 For purposes of this paragraph only, the following rules shall apply:

39 (A) The determination of the relative fair market values of the
40 acquired assets and the total assets shall be made as of the last day

1 of the first taxable year in which the taxpayer (or any related
2 person) first uses any of the acquired trade or business assets in
3 its business activity.

4 (B) Any acquired assets that constituted property described in
5 Section 1221(1) of the Internal Revenue Code in the hands of the
6 transferor shall not be treated as assets acquired from an existing
7 trade or business, unless those assets also constitute property
8 described in Section 1221(1) of the Internal Revenue Code in the
9 hands of the acquiring taxpayer (or related person).

10 (2) In any case where a taxpayer (or any related person) is
11 engaged in one or more trade or business activities in this state, or
12 has been engaged in one or more trade or business activities in this
13 state within the preceding 36 months (“prior trade or business
14 activity”), and thereafter commences an additional trade or business
15 activity in this state, the additional trade or business activity shall
16 only be treated as a new business if the additional trade or business
17 activity is classified under a different division of the Standard
18 Industrial Classification (SIC) Manual published by the United
19 States Office of Management and Budget, 1987 edition, than are
20 any of the taxpayer’s (or any related person’s) current or prior
21 trade or business activities.

22 (3) In any case where a taxpayer, including all related persons,
23 is engaged in trade or business activities wholly outside of this
24 state and the taxpayer first commences doing business in this state
25 (within the meaning of Section 23101) after December 31, 1993
26 (other than by purchase or other acquisition described in paragraph
27 (1)), the trade or business activity shall be treated as a new business
28 under paragraph (2) of subdivision (e).

29 (4) In any case where the legal form under which a trade or
30 business activity is being conducted is changed, the change in form
31 shall be disregarded and the determination of whether the trade or
32 business activity is a new business shall be made by treating the
33 taxpayer as having purchased or otherwise acquired all or any
34 portion of the assets of an existing trade or business under the rules
35 of paragraph (1) of this subdivision.

36 (5) “Related person” shall mean any person that is related to
37 the taxpayer under either Section 267 or 318 of the Internal
38 Revenue Code.

39 (6) “Acquire” shall include any gift, inheritance, transfer incident
40 to divorce, or any other transfer, whether or not for consideration.

(7) (A) For taxable years beginning on or after January 1, 1997, the term “new business” shall include any taxpayer that is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and as further amended, and that has not received regulatory approval for any product from the United States Food and Drug Administration.

(B) For purposes of this paragraph:

(i) “Biopharmaceutical activities” means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities that make use of chemical compounds to produce commercial products.

(ii) “Other biotechnology activities” means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(g) In computing the modifications under Section 172(d)(2) of the Internal Revenue Code, relating to capital gains and losses of taxpayers other than corporations, the exclusion provided by Section 18152.5 shall not be allowed.

(h) Notwithstanding any provisions of this section to the contrary, a deduction shall be allowed to a “qualified taxpayer” as provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7.

(i) The Franchise Tax Board may prescribe appropriate regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the purposes of this section through ~~splitups~~ *split-ups*, shell corporations, partnerships, tiered ownership structures, or otherwise.

(j) The Franchise Tax Board may reclassify any net operating loss carryover determined under either paragraph (2) or (3) of subdivision (b) as a net operating loss carryover under paragraph (1) of subdivision (b) upon a showing that the reclassification is necessary to prevent evasion of the purposes of this section.

(k) Except as otherwise provided, the amendments made by Chapter 107 of the Statutes of 2000 shall apply to net operating losses for taxable years beginning on or after January 1, 2000.

SEC. 2. Section 17276.21 of the Revenue and Taxation Code is amended to read:

17276.21. (a) Notwithstanding Sections 17276, 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, 17276.7, and 17276.20 of this code and Section 172 of the Internal Revenue Code, no net operating loss deduction shall be allowed for any taxable year beginning on or after January 1, 2008, and before January 1, 2012.

(b) For any net operating loss or carryover of a net operating loss for which a deduction is denied by subdivision (a), the carryover period under Section 172 of the Internal Revenue Code shall be extended as follows:

(1) By one year, for losses incurred in taxable years beginning on or after January 1, 2010, and before January 1, 2011.

(2) By two years, for losses incurred in taxable years beginning on or after January 1, 2009, and before January 1, 2010.

(3) By three years, for losses incurred in taxable years beginning on or after January 1, 2008, and before January 1, 2009.

(4) By four years, for losses incurred in taxable years beginning before January 1, 2008.

(c) The provisions of this section shall not apply to the following taxpayers:

(1) For any taxable year beginning on or after January 1, 2008, and before January 1, 2010, this section shall not apply to a taxpayer with net business income of less than five hundred thousand dollars (\$500,000) for the taxable year. For purposes of this paragraph, business income means:

(A) Income from a trade or business, whether conducted by the taxpayer or by a pass-thru entity owned directly or indirectly by the taxpayer. For purposes of this paragraph, the term “pass-thru entity” means a partnership or an “S” corporation.

(B) Income from rental activity.

(C) Income attributable to a farming business.

(2) For any taxable year beginning on or after January 1, 2010, and before January 1, 2012, this section shall not apply to a taxpayer with modified adjusted gross income of less than three hundred thousand dollars (\$300,000) for the taxable year. For purposes of this paragraph, “modified adjusted gross income”

1 means the amount described in paragraph (2) of subdivision (h)
2 of Section 17024.5, determined without regard to the deduction
3 allowed under Section 172 of the Internal Revenue Code, relating
4 to net operating loss deduction.

5 SEC. 3. Section 17276.22 of the Revenue and Taxation Code
6 is amended to read:

7 17276.22. Notwithstanding Section 17276.1, 17276.2, 17276.4,
8 17276.5, 17276.6, or 17276.7 to the contrary, a net operating loss
9 attributable to a taxable year beginning on or after January 1, 2008,
10 shall be a net operating carryover to each of the 20 taxable years
11 following the year of the loss.

12 SEC. 4. Section 24416.20 of the Revenue and Taxation Code
13 is amended to read:

14 24416.20. Except as provided in Sections 24416.1, 24416.2,
15 24416.4, 24416.5, 24416.6, and 24416.7, a net operating loss
16 deduction shall be allowed in computing net income under Section
17 24341 and shall be determined in accordance with Section 172 of
18 the Internal Revenue Code, except as otherwise provided.

19 (a) (1) Net operating losses attributable to taxable years
20 beginning before January 1, 1987, shall not be allowed.

21 (2) A net operating loss shall not be carried forward to any
22 taxable year beginning before January 1, 1987.

23 (b) (1) Except as provided in paragraphs (2) and (3), the
24 provisions of Section 172(b)(2) of the Internal Revenue Code,
25 relating to amount of carrybacks and carryovers, shall be modified
26 so that the applicable percentage of the entire amount of the net
27 operating loss for any taxable year shall be eligible for carryover
28 to any subsequent taxable year. For purposes of this subdivision,
29 the applicable percentage shall be:

30 (A) Fifty percent for any taxable year beginning before January
31 1, 2000.

32 (B) Fifty-five percent for any taxable year beginning on or after
33 January 1, 2000, and before January 1, 2002.

34 (C) Sixty percent for any taxable year beginning on or after
35 January 1, 2002, and before January 1, 2004.

36 (D) One hundred percent for any taxable year beginning on or
37 after January 1, 2004.

38 (2) In the case of a taxpayer who has a net operating loss in any
39 taxable year beginning on or after January 1, 1994, and who
40 operates a new business during that taxable year, each of the

1 following shall apply to each loss incurred during the first three
2 taxable years of operating the new business:

3 (A) If the net operating loss is equal to or less than the net loss
4 from the new business, 100 percent of the net operating loss shall
5 be carried forward as provided in subdivision (e).

6 (B) If the net operating loss is greater than the net loss from the
7 new business, the net operating loss shall be carried over as
8 follows:

9 (i) With respect to an amount equal to the net loss from the new
10 business, 100 percent of that amount shall be carried forward as
11 provided in subdivision (e).

12 (ii) With respect to the portion of the net operating loss that
13 exceeds the net loss from the new business, the applicable
14 percentage of that amount shall be carried forward as provided in
15 subdivision (d).

16 (C) For purposes of Section 172(b)(2) of the Internal Revenue
17 Code, the amount described in clause (ii) of subparagraph (B) shall
18 be absorbed before the amount described in clause (i) of
19 subparagraph (B).

20 (3) In the case of a taxpayer who has a net operating loss in any
21 taxable year beginning on or after January 1, 1994, and who
22 operates an eligible small business during that taxable year, each
23 of the following shall apply:

24 (A) If the net operating loss is equal to or less than the net loss
25 from the eligible small business, 100 percent of the net operating
26 loss shall be carried forward to the taxable years specified in
27 paragraph (1) of subdivision (e).

28 (B) If the net operating loss is greater than the net loss from the
29 eligible small business, the net operating loss shall be carried over
30 as follows:

31 (i) With respect to an amount equal to the net loss from the
32 eligible small business, 100 percent of that amount shall be carried
33 forward as provided in subdivision (e).

34 (ii) With respect to that portion of the net operating loss that
35 exceeds the net loss from the eligible small business, the applicable
36 percentage of that amount shall be carried forward as provided in
37 subdivision (e).

38 (C) For purposes of Section 172(b)(2) of the Internal Revenue
39 Code, the amount described in clause (ii) of subparagraph (B) shall

1 be absorbed before the amount described in clause (i) of
2 subparagraph (B).

3 (4) In the case of a taxpayer who has a net operating loss in a
4 taxable year beginning on or after January 1, 1994, and who
5 operates a business that qualifies as both a new business and an
6 eligible small business under this section, that business shall be
7 treated as a new business for the first three taxable years of the
8 new business.

9 (5) In the case of a taxpayer who has a net operating loss in a
10 taxable year beginning on or after January 1, 1994, and who
11 operates more than one business, and more than one of those
12 businesses qualifies as either a new business or an eligible small
13 business under this section, paragraph (2) shall be applied first,
14 except that if there is any remaining portion of the net operating
15 loss after application of clause (i) of subparagraph (B) of paragraph
16 (2), paragraph (3) shall be applied to the remaining portion of the
17 net operating loss as though that remaining portion of the net
18 operating loss constituted the entire net operating loss.

19 (6) For purposes of this section, “net loss” means the amount
20 of net loss after application of Sections 465 and 469 of the Internal
21 Revenue Code.

22 (c) For any taxable year in which the taxpayer has in effect a
23 water’s-edge election under Section 25110, the deduction of a net
24 operating loss carryover shall be denied to the extent that the net
25 operating loss carryover was determined by taking into account
26 the income and factors of an affiliated corporation in a combined
27 report whose income and apportionment factors would not have
28 been taken into account if a water’s-edge election under Section
29 25110 had been in effect for the taxable year in which the loss was
30 incurred.

31 (d) Net operating loss carrybacks shall not be allowed.

32 (e) (1) (A) For a net operating loss for any taxable year
33 beginning on or after January 1, 1987, and before January 1, 2000,
34 Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified
35 to substitute “five taxable years” in lieu of “20 years” except as
36 otherwise provided in paragraphs (2), (3), and (4).

37 (B) For a net operating loss for any income year beginning on
38 or after January 1, 2000, and before January 1, 2008, Section
39 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to
40 substitute “10 taxable years” in lieu of “20 taxable years.”

(2) For any income year beginning before January 1, 2000, in the case of a “new business,” the “five taxable years” referred to in paragraph (1) shall be modified to read as follows:

(A) “Eight taxable years” for a net operating loss attributable to the first taxable year of that new business.

(B) “Seven taxable years” for a net operating loss attributable to the second taxable year of that new business.

(C) “Six taxable years” for a net operating loss attributable to the third taxable year of that new business.

(3) For any carryover of a net operating loss for which a deduction is denied by Section 24416.3, the carryover period specified in this subdivision shall be extended as follows:

(A) By one year for a net operating loss attributable to taxable years beginning in 1991.

(B) By two years for a net operating loss attributable to taxable years beginning prior to January 1, 1991.

(4) The net operating loss attributable to taxable years beginning on or after January 1, 1987, and before January 1, 1994, shall be a net operating loss carryover to each of the 10 taxable years following the year of the loss if it is incurred by a corporation that was either of the following:

(A) Under the jurisdiction of the court in a Title 11 or similar case at any time prior to January 1, 1994. The loss carryover provided in the preceding sentence shall not apply to any loss incurred in an income year after the taxable year during which the corporation is no longer under the jurisdiction of the court in a Title 11 or similar case.

(B) In receipt of assets acquired in a transaction that qualifies as a tax-free reorganization under Section 368(a)(1)(G) of the Internal Revenue Code.

(f) For purposes of this section:

(1) “Eligible small business” means any trade or business that has gross receipts, less returns and allowances, of less than one million dollars (\$1,000,000) during the income year.

(2) Except as provided in subdivision (g), “new business” means any trade or business activity that is first commenced in this state on or after January 1, 1994.

(3) “Title 11 or similar case” shall have the same meaning as in Section 368(a)(3) of the Internal Revenue Code.

1 (4) In the case of any trade or business activity conducted by a
2 partnership or an “S” corporation, paragraphs (1) and (2) shall be
3 applied to the partnership or “S” corporation.

4 (g) For purposes of this section, in determining whether a trade
5 or business activity qualifies as a new business under paragraph
6 (2) of subdivision (e), the following rules shall apply:

7 (1) In any case where a taxpayer purchases or otherwise acquires
8 all or any portion of the assets of an existing trade or business
9 (irrespective of the form of entity) that is doing business in this
10 state (within the meaning of Section 23101), the trade or business
11 thereafter conducted by the taxpayer (or any related person) shall
12 not be treated as a new business if the aggregate fair market value
13 of the acquired assets (including real, personal, tangible, and
14 intangible property) used by the taxpayer (or any related person)
15 in the conduct of its trade or business exceeds 20 percent of the
16 aggregate fair market value of the total assets of the trade or
17 business being conducted by the taxpayer (or any related person).
18 For purposes of this paragraph only, the following rules shall apply:

19 (A) The determination of the relative fair market values of the
20 acquired assets and the total assets shall be made as of the last day
21 of the first taxable year in which the taxpayer (or any related
22 person) first uses any of the acquired trade or business assets in
23 its business activity.

24 (B) Any acquired assets that constituted property described in
25 Section 1221(1) of the Internal Revenue Code in the hands of the
26 transferor shall not be treated as assets acquired from an existing
27 trade or business, unless those assets also constitute property
28 described in Section 1221(1) of the Internal Revenue Code in the
29 hands of the acquiring taxpayer (or related person).

30 (2) In any case where a taxpayer (or any related person) is
31 engaged in one or more trade or business activities in this state, or
32 has been engaged in one or more trade or business activities in this
33 state within the preceding 36 months (“prior trade or business
34 activity”), and thereafter commences an additional trade or business
35 activity in this state, the additional trade or business activity shall
36 only be treated as a new business if the additional trade or business
37 activity is classified under a different division of the Standard
38 Industrial Classification (SIC) Manual published by the United
39 States Office of Management and Budget, 1987 edition, than are

1 any of the taxpayer's (or any related person's) current or prior
2 trade or business activities.

3 (3) In any case where a taxpayer, including all related persons,
4 is engaged in trade or business activities wholly outside of this
5 state and the taxpayer first commences doing business in this state
6 (within the meaning of Section 23101) after December 31, 1993
7 (other than by purchase or other acquisition described in paragraph
8 (1)), the trade or business activity shall be treated as a new business
9 under paragraph (2) of subdivision (e).

10 (4) In any case where the legal form under which a trade or
11 business activity is being conducted is changed, the change in form
12 shall be disregarded and the determination of whether the trade or
13 business activity is a new business shall be made by treating the
14 taxpayer as having purchased or otherwise acquired all or any
15 portion of the assets of an existing trade or business under the rules
16 of paragraph (1) of this subdivision.

17 (5) "Related person" shall mean any person that is related to
18 the taxpayer under either Section 267 or 318 of the Internal
19 Revenue Code.

20 (6) "Acquire" shall include any transfer, whether or not for
21 consideration.

22 (7) (A) For taxable years beginning on or after January 1, 1997,
23 the term "new business" shall include any taxpayer that is engaged
24 in biopharmaceutical activities or other biotechnology activities
25 that are described in Codes 2833 to 2836, inclusive, of the Standard
26 Industrial Classification (SIC) Manual published by the United
27 States Office of Management and Budget, 1987 edition, and as
28 further amended, and that has not received regulatory approval for
29 any product from the United States Food and Drug Administration.

30 (B) For purposes of this paragraph:

31 (i) "Biopharmaceutical activities" means those activities that
32 use organisms or materials derived from organisms, and their
33 cellular, subcellular, or molecular components, in order to provide
34 pharmaceutical products for human or animal therapeutics and
35 diagnostics. Biopharmaceutical activities make use of living
36 organisms to make commercial products, as opposed to
37 pharmaceutical activities that make use of chemical compounds
38 to produce commercial products.

39 (ii) "Other biotechnology activities" means activities consisting
40 of the application of recombinant DNA technology to produce

1 commercial products, as well as activities regarding pharmaceutical
2 delivery systems designed to provide a measure of control over
3 the rate, duration, and site of pharmaceutical delivery.

4 (h) For purposes of corporations whose net income is determined
5 under Chapter 17 (commencing with Section 25101), Section
6 25108 shall apply to each of the following:

7 (1) The amount of net operating loss incurred in any taxable
8 year that may be carried forward to another taxable year.

9 (2) The amount of any loss carry forward that may be deducted
10 in any taxable year.

11 (i) The provisions of Section 172(b)(1)(D) of the Internal
12 Revenue Code, relating to bad debt losses of commercial banks,
13 shall not be applicable.

14 (j) The Franchise Tax Board may prescribe appropriate
15 regulations to carry out the purposes of this section, including any
16 regulations necessary to prevent the avoidance of the purposes of
17 this section through ~~splitups~~ *split-ups*, shell corporations,
18 partnerships, tiered ownership structures, or otherwise.

19 (k) The Franchise Tax Board may reclassify any net operating
20 loss carryover determined under either paragraph (2) or (3) of
21 subdivision (b) as a net operating loss carryover under paragraph
22 (1) of subdivision (b) upon a showing that the reclassification is
23 necessary to prevent evasion of the purposes of this section.

24 (l) Except as otherwise provided, the amendments made by
25 Chapter 107 of the Statutes of 2000 shall apply to net operating
26 losses for taxable years beginning on or after January 1, 2000.

27 SEC. 5. Section 24416.21 of the Revenue and Taxation Code
28 is amended to read:

29 24416.21. (a) Notwithstanding Sections 24416, 24416.1,
30 24416.2, 24416.4, 24416.5, 24416.6, 24416.7, and 24416.20 of
31 this code and Section 172 of the Internal Revenue Code, no net
32 operating loss deduction shall be allowed for any taxable year
33 beginning on or after January 1, 2008, and before January 1, 2012.

34 (b) For any net operating loss or carryover of a net operating
35 loss for which a deduction is denied by subdivision (a), the
36 carryover period under Section 172 of the Internal Revenue Code
37 shall be extended as follows:

38 (1) By one year, for losses incurred in taxable years beginning
39 on or after January 1, 2010, and before January 1, 2011.

1 (2) By two years, for losses incurred in taxable years beginning
2 on or after January 1, 2009, and before January 1, 2010.

3 (3) By three years, for losses incurred in taxable years beginning
4 on or after January 1, 2008, and before January 1, 2009.

5 (4) By four years, for losses incurred in taxable years beginning
6 before January 1, 2008.

7 (c) The disallowance of any net operating loss deduction for
8 any taxable year beginning on or after January 1, 2008, and before
9 January 1, 2010, pursuant to subdivision (a) shall not apply to a
10 taxpayer with income subject to tax under this part of less than
11 five hundred thousand dollars (\$500,000) for the taxable year.

12 (d) (1) The disallowance of any net operating loss deduction
13 for any taxable year beginning on or after January 1, 2010, and
14 before January 1, 2012, pursuant to subdivision (a) shall not apply
15 to a taxpayer with preapportioned income of less than three hundred
16 thousand dollars (\$300,000) for the taxable year.

17 (2) For purposes of this subdivision, “preapportioned income”
18 means net income after state adjustments, before the application
19 of the apportionment and allocation provisions of this part.

20 (3) For taxpayers that are required to be included in a combined
21 report under Section 25101 or authorized to be included in a
22 combined report under Section 25101.15, the amount prescribed
23 in paragraph (1) shall apply to the aggregate amount of
24 preapportioned income for all members included in a combined
25 report.

26 (e) Notwithstanding subdivision (a), this section shall not apply
27 to a taxpayer that ceased to do business or has a final taxable year
28 ending prior to August 28, 2008, that sold or transferred
29 substantially all of its assets resulting in a gain on sale during a
30 taxable year ending prior to August 28, 2008, for which the gain
31 could be offset with existing net operating loss deductions and the
32 sale or transfer occurred pursuant to a plan of reorganization under
33 Chapter 11 of Title 11 of the United States Code. An amended tax
34 return claiming net operating loss deductions allowed pursuant to
35 this subdivision shall be treated as a timely filed original return.

36 (f) The Legislature finds and declares that the addition of
37 subdivision (e) to this section by the act adding this subdivision
38 fulfills a statewide public purpose by providing necessary tax relief
39 for a taxpayer that ceased to do business or has a final taxable year
40 ending prior to August 28, 2008, that sold or transferred

1 substantially all of its assets resulting in a gain or sale during a
2 taxable year prior to August 28, 2008, for which the gain could be
3 offset with existing net operating loss deductions and the sale or
4 transfer occurred pursuant to a plan of reorganization under Chapter
5 11 of Title 11 of the United States Code, in order to ensure that
6 these taxpayers are not permanently denied the net operating loss
7 deduction.

8 SEC. 6. Section 24416.22 of the Revenue and Taxation Code
9 is amended to read:

10 24416.22. Notwithstanding Section 24416.1, 24416.2, 24416.4,
11 24416.5, 24416.6, or 24416.7 to the contrary, a net operating loss
12 attributable to a taxable year beginning on or after January 1, 2008,
13 shall be a net operating carryover to each of the 20 taxable years
14 following the year of the loss.

15 SEC. 7. This act provides for a tax levy within the meaning of
16 Article IV of the Constitution and shall go into immediate effect.